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August 20, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte, CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

Dear Ms. Roman Salas:

On Thursday, August 19, 1999, Nancy Dalton, Russell Morgan and the undersigned, of AT&T, met with Audrey Wright, Jessica Rosenworcel, William Agee and John Stanley of the Common Carrier Bureau's Policy and Program Planning Division. The purpose of the meeting was to discuss the attached list of section 271 related issues in Texas. While we have attempted to list non-OSS issues which we consider significant, there are many other issues which are highly significant, and we do not intend – by omitting them from this list – to suggest otherwise. Moreover, we have limited our "non-OSS" issues to checklist items, thereby excluding a number of public interest and section 272 issues which AT&T believes are very significant.

Pursuant to section 1.1206 of the Commission's rules, an original and two copies of this Notice and attachment are being filed with the Office of the Secretary.

Sincerely,

A handwritten signature in black ink, appearing to read "F. S. Simone".

ATTACHMENT

cc: A. Wright
J. Rosenworcel
W. Agee
J. Stanley

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SIGNIFICANT NON-OSS ISSUES -- TEXAS¹

I. UNE ISSUES

- A. As reflected in both the SWBT/AT&T Interconnection Agreement and SWBT's PIA, SWBT's position is that it may procure or accept from its equipment vendors license restrictions that prohibit CLECs from using SWBT's unbundled network elements. This position, which violates the non-discrimination provisions of Section 251, could foreclose the use of UNEs or materially increase their cost.
- B. SWBT has failed to make an unrestricted, binding legal commitment to combine UNEs, while at the same time failing to offer non-discriminatory methods and procedures that would enable CLECs to combine UNEs themselves.
 - 1. The PIA improperly permits SWBT, under certain circumstances, to refuse (a) to combine previously uncombined UNEs for

¹ This issues list excludes such OSS-related matters as SWBT's systems and processes, testing (internal SWBT testing, Telcordia testing, system readiness testing, etc.), change control/versioning, access to databases (particularly access to SWBT's LIDB database), and white pages (including access to SWBT's ALPS/LIRA system).

While we have attempted to list ten non-OSS issues which we consider particularly significant, there are many other issues which are highly significant, and we do not intend -- by omitting them from this list -- to suggest otherwise. Moreover, we have limited our "non-OSS" issues to checklist items, thereby excluding a number of public interest and Section 272 issues which AT&T believes are very significant. Finally, this document also does not reflect AT&T's concerns about the extraordinary procedures employed by the TPUC in developing the Memorandum of Understanding ("MOU") that was negotiated on an ex parte basis between SWBT and the TPUC and the terms of the resulting Proposed Interconnection Agreement ("PIA").

service to CLEC business customers, and (b) to combine certain types of loop and trunk connections known as enhanced extended loops ("EELs").

2. SWBT's proposals for enabling CLECs to combine UNEs and EELs provide methods of access which are inferior to those SWBT enjoys. SWBT's proposed methods require manual connection of elements by the CLEC at a location remote from the MDF. Among other things, these methods deny CLECs access to SWBT's MDF and impose on CLECs unnecessary costs, undue delay, and an unnecessarily high risk of failure. SWBT has also failed to provide performance measures applicable to these access methods, and it has not, and cannot, show that its proposed methods are commercially viable.

- C. SWBT fails to provide CLECs with access to unbundled loops in a form that gives them a meaningful opportunity to compete.

1. SWBT has failed to demonstrate that its methods and procedures for the coordinated conversion of unbundled loops and the porting of numbers operate in practice to provide a meaningful opportunity to compete. In fact, Telcordia's July 22 interim OSS testing report concluded that SWBT's UNE-L processes and systems failed to meet expectations in 50% of the testing scenarios.

II. PRICING ISSUES

- A. UNE Glue Charges. Based on the Eighth Circuit's decision in Iowa Utilities Board, and SWBT's subsequent commitments to combine rather than give CLECs access to the central office to do their own combining, the Texas PUC authorized SWBT to collect non-recurring charges for the "hypothetical" costs of reconnecting such theoretically disconnected elements. Notwithstanding the Supreme Court's recent

reversal of the Eighth's Circuit's decision, most of these unlawful glue charges -- which by definition cannot be cost-based since no combining activities are required for the purchase of existing combinations -- remain in effect under the AT&T/SWBT Interconnection Agreement and have been reaffirmed by the Texas PUC in the PIA. These remaining glue charges are very substantial, amounting to \$20.47 on a typical UNE POTS order (out of total non-recurring charges of \$26.95). SWBT does not incur "reconnection" costs, or any other installation or provisioning costs, on a UNE-P conversion order that could support these charges.

- B. Entrance Facilities. The Texas PUC has authorized SWBT to impose very substantial "entrance facility" charges for connecting unbundled dedicated transport to a CLEC's Point of Presence (POP). However, where a CLEC's wire center is located on a SWBT SONET ring (as is generally the case with AT&T in Texas) such charges are unnecessary "phantom" charges.

III. DSL ISSUES

- A. SWBT fails to provide terms and conditions under which CLECs are given an opportunity to compete with the xDSL service that SWBT is currently offering to its retail customers. The Texas PUC has deferred development of terms and conditions for xDSL capable loops (conditioned loops without xDSL enabling electronics) to a pending arbitration proceeding, and the terms and conditions that SWBT has been willing to offer, short of arbitration, are inconsistent with the FCC's Advanced Services Order and will not support a meaningful opportunity to compete. The terms and conditions for loops that are equipped with xDSL functionality have not been established.
- B. SWBT has failed to demonstrate -- through testing, commercial usage or otherwise -- its operational readiness to provide CLECs with parity access to its network for the purpose of offering competitive xDSL service.

IV. PERFORMANCE MEASURES

- A. SWBT performance data cannot be used to demonstrate checklist compliance (or for any other important purpose), because the data is unreliable and has not been independently validated.
 - 1. Independent validation is essential before relying on self-reporting by an interested party. Experience confirms that SWBT performance data has been subject to repeated retroactive restatements and contains numerous errors and discrepancies.
 - 2. Telcordia has not validated the accuracy of SWBT performance data.
- B. Reliability issues aside, SWBT Texas performance data to date confirm that SWBT is not providing sustained nondiscriminatory performance, even at limited commercial volumes.
- C. The Texas performance measures do not adequately assess SWBT's compliance with the Act's non-discrimination requirements, because over one-fourth of the measures use fixed benchmarks rather than parity comparisons. The Texas benchmarks are often used in areas where SWBT retail analogues are clearly available, such as pre-order response time and FOC return. Moreover, virtually all of the benchmarks adopted in Texas were selected arbitrarily, without any empirical evidence demonstrating that they provide CLECs with a meaningful opportunity to compete.
- D. The performance remedy plan approved by Texas fails to provide effective, automatic self-enforcement:
 - 1. The \$120 million annual cap on penalties is too low to provide a meaningful incentive for SWBT's continued compliance.

2. The Texas PUC's classification of performance measures for damages and penalty purposes, and the quantities of damages and penalties assigned to particular measures, will not be adequate to reasonably compensate CLECs for performance breaches or to deter backsliding by SWBT. Those classifications and quantities were not supported by empirical evidence.
3. The Texas performance remedy plan is not self-executing, because it presents SWBT with extensive opportunities to litigate such matters as "non-SWBT problems" as an excuse for poor performance.
4. The MOU provides: "It is the intention of the parties [i.e. SWBT and the TPUC] that no later than two years after SWBT or its affiliate receives Section 271 relief, the number of performance measures subject to damages and assessments should be reduced by at least 50%." This language, which is substantially captured in the PIA, improperly separates the reduction of SWBT's performance obligations from its actual performance.

V. SWBT FAILS TO PROVIDE ACCESS TO PHYSICAL AND VIRTUAL COLLOCATION

A. The terms of the proposed revisions to SWBT's physical and virtual collocation tariffs fail to provide non-discriminatory access:

1. SWBT's physical collocation proposal fails to offer cageless collocation, because it permits SWBT to fully partition its equipment from CLECs' equipment and imposes the cost of partition on CLECs;
2. SWBT's physical collocation proposal fails to provide definite, binding and non-discriminatory standards governing SWBT's space reservation policy.

3. The proposed rates for both physical and virtual collocation are interim rates which are not consistent with TELRIC methodology. There is no assurance that the rates ultimately adopted will be consistent with TELRIC methodology.